

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.202(b) |) | MM Docket No. 97-215 |
| Table of Allotments, |) | RM-9168 |
| FM Broadcast Stations |) | |
| (Turrell and Wilson, Arkansas) |) | |
| |) | |

To: Chief, Allocations Branch

COMMENTS OF POLLACK BROADCASTING COMPANY

Pollack Broadcasting Company ("Pollack") is the permittee of FM radio broadcast station KAFW, Channel 234A, Wilson, Arkansas.¹ Pollack, by its attorneys, submits the following comments in support of the Notice of Proposed Rule Making, DA 97-2169, released October 10, 1997.

The Notice was issued in response to Pollack's petition for a change in the FM Table of Allotments, Section 73.202(b) of the Commission's Rules,² to reallocate

¹ Channel 234A was substituted for Channel 279A as the Wilson allotment in MM Docket 93-259 by *Earle, Pocahontas and Wilson, Arkansas* and *Como and New Albany, Mississippi*. 10 FCC Rcd 8270 (Alloc. Br. 1995).

² 47 CFR § 73.202(b).

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Channel 234A from Wilson to Turrell, Arkansas, as the community's first local aural transmission service, and for concomitant modification of the permit for station KAFW.

Pollack requested modification of the authorization for station KAFW(FM) to specify Turrell, Arkansas, as its community of license pursuant to Section 1.420(i) of the Commission's Rules.³ This rule authorizes the Commission to modify the permit or license of an FM station to specify a new community of license, by rule making, where the amended allotment would be mutually exclusive with the station's present assignment, without subjecting the petitioner's authorization to the risk of competing applications by third parties.

As the Commission properly found in the Notice, at ¶5, Pollack's rule making petition qualifies for the application of Section 1.420(i).

The separation study in the technical statement submitted with the petition demonstrates that the proposed change in the community of license of KAFW complies with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. The proposed geographic coordinates for the allotment in Turrell are 30° 22' 36" North, 90° 15' 12" West.

³ 47 CFR § 1.420(i).

**Turrell Satisfies the Commission's
Requirements for Community of License**

Indicia of community status determine whether a locality has the political and demographic characteristics needed for a community of license. These include such factors as (a) incorporation, (b) political, social or business organizations, and (c) the local provision of municipal services. *See, e.g., Trade, Tennessee and Beech Mountain, North Carolina*, 6 FCC Rcd 5835 (Alloc. Br. 1991); *Essex, New York*, 4 FCC Rcd 5775 (Alloc. Br. 1989).

The population of Turrell is approximately one thousand.⁴ Turrell is located in eastern Arkansas, approximately 18 miles southwest of Wilson. As recognized in ¶3 of the Notice, Turrell is an incorporated municipality with an elected mayor. In addition, it has its own police department and water department. It has two grocery stores and four churches.

Accordingly, Turrell satisfies the technical, political and demographic criteria for finding that the city qualifies as a community of license for a radio station.

Preferential Arrangement of Allotments

The proposed change will result in a preferential arrangement of allotments pursuant to Section 307(b) of the Communications Act of 1934, as amended, as

⁴ The 1990 Census, U.S. Dept. of Commerce, reported Turrell's population as 988.

defined in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) ("1982 Revision"), and *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989) ("1989 Modification"), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("1990 Reconsideration").

The Commission is given statutory direction to distribute licenses "among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."⁵

In carrying out this responsibility, "the Commission assesses whether the proposed allotment plan would lead to a preferred distribution of allotments by examining the facilities available in the existing and proposed communities and the relative population of the communities." *Parker and Port St. Joe, Florida* (MM Docket No. 95-32), 11 FCC Rcd 1095, ¶ 4 (Alloc. Br. 1996). The relative populations of the areas served is also considered; comparative merit is recognized in proposals that increase the number of persons served by an allotment. *Saltville, Virginia and Jefferson, North Carolina*, 10 FCC Rcd 7578, 7580 ¶9 (Alloc. Br. 1995); *Pawley's Island and Atlantic Beach, South Carolina*, 8 FCC Rcd 8657, 8657 ¶2 (Alloc. Br. 1993)

⁵ 47 USC § 307(b).

The Commission's FM allotment priorities are (1) first aural service, (2) second aural service, (3) first local (i.e., transmission) service, and (4) other public interest matters. Equivalent weight is given to priorities (2) and (3). *See 1982 Revision*, 90 FCC 2d at 92; *1989 Modification*, 4 FCC Rcd at 4873 & n.8.

In adopting Section 1.420(i) of the Commission's Rules in the *1989 Modification*, the Commission discussed the application of its rules and policies for change of community of license, including the FM allotment priorities. In that discussion it stated:

We believe it is best to take into account *the totality of the service improvements* resulting from a proposed change in community of license when determining whether an allotment proposal should be approved. Therefore, [where a licensee proposes to change its transmitter site and community of license], we will decide the proposal on a case by case basis, based on whether or not the proposed changes, *taken as a whole*, would advance our allotment priorities.

1989 Modification, 4 FCC Rcd at 4874 (footnote omitted; emphasis added).

In the *1990 Reconsideration*, the Commission discussed the application of the FM allotment priorities to unbuilt construction permits. The Commission explained that its policy of severely discouraging the removal of an existing service is grounded in the public's "legitimate expectation that existing service will continue." 5 FCC Rcd at 7097 ¶19. "From the public's perspective, the potential

for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set." *Id.*

The Commission held that a permit for an unconstructed station receives a categorically lower preference than an existing service. For example, in *Pawley's Island*, the difference in priority was explained thus:

While we consider important the potential service that unbuilt stations represent, we acknowledge that they are not a service on which the public has come to rely. Therefore, we do not consider their removal from a community to represent the same concerns with loss of service that removal of an operating station would represent.

8 FCC Rcd at 8657. *See also Sanibel and San Carlos Park, Florida*, 10 FCC Rcd 7215 (1995); *Glencoe and LeSueur, Minnesota*, 7 FCC Rcd 7651 (1992). Consequently, the showing necessary to justify reallocation of a permit is not as stringent as that for a station that is on the air.

On October 9, 1996, the Commission's Audio Services Division granted the application for a change in the city of license of AM station KOSE from Osceola to Wilson, Arkansas. On May 9, 1997, Newport Broadcasting Company, the new licensee of AM station KOSE, filed an application for a license to cover the outstanding construction permit (BP-960223AB) to change the community of license of AM station KOSE from Osceola, Arkansas to Wilson, Arkansas. That

application was granted on July 29, 1997. Thus, Wilson, Arkansas now has a local aural transmission service other than KAFW. Wilson will not be deprived of its aural service by this change of city of license of KAFW to Turrell, Arkansas.

Discussion

The instant rule making proceeding will increase the fairness, efficiency and equity of the distribution of radio services in northeastern Arkansas. This rule making will provide Turrell with its first local transmission service; a local transmission service will remain in Wilson.

Provision of the first local transmission service to Turrell qualifies for preference under priority (3). In addition, the proposed reallocation of KAFW, as an unlicensed station, does not invoke the Commission's restrictions on reallocation of existing services.

The populations of Turrell and of Wilson are each approximately one thousand, so no difference in allocation priorities flows from the respective size of the communities. However, the Technical Statement attached to Pollack's Amended & Restated Petition for Rule Making indicates that KAFW serving Turrell will provide service to 87,700 people.⁶ This is nearly three times the population that

⁶ This is based on the 1990 U.S. Census and a facility operating at 6 kW effective radiated power and a height above average terrain of one hundred meters.

would be served by KAFW in Wilson. The improved service that KAFW can provide from Turrell is further evidence of the meritorious nature of this rule making proposal.

The other requirements for reallocation of KAFW to Turrell are also satisfied here. Neither Turrell nor Wilson is part of an Urbanized Area.

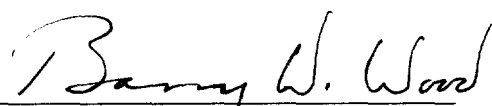
Consequently, considering the totality of the service improvements, the Commission's rules and policies give strong priority to the rule making proposal. The changes presented in this proposal will establish a fairer, more efficient and more equitable distribution of radio service between the communities of Turrell and Wilson, Arkansas.

Pollack hereby reiterates its commitment to file an application on FCC Form 301 to confirm the change in city of license for KAFW from Wilson to Turrell immediately following the issuance of the Commission's Report and Order. Pollack has already located a transmitter site for the facility that will cover Turrell with a 70 dbu or better signal, and has prepared the appropriate engineering study. Upon the grant of that Form 301 application, Pollack will promptly construct facilities and will file a covering license application within ten days following the completion of construction.

Accordingly, Pollack hereby requests that the Commission issue a report and order modifying the FM Table of Allotments so as to change KAFW's community of license from Wilson, Arkansas, to Turrell, Arkansas, in accordance with the Commission's proposal.

Respectfully submitted,

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